



Terms of Use of the app sviftme

data status from 1st January 2019

MyTomSolutions, owned by Katja Tomaschek, Mergentheimer Straße 23, D-71642 Ludwigsburg, Germany, operates the **sviftme** platform designed to link up yoga studios, gyms and similar facilities (hereinafter referred to as "studio") on one side and the coaches, teachers and trainers working at these facilities (hereinafter referred to as "teachers") on the other side. The product offered to the studios is a web-based system for coordinating offered courses, assigning the individual courses with specific time slots to individual teachers and for managing teacher drop-outs and their substitution. This is combined with a mobile app that can be used by the individual teachers.

1. Scope of application

The following **Terms of Use** govern the business and legal relationship between MyTomSolutions and the teachers of the studios (hereinafter referred to as "users").

MyTomSolutions itself does not offer any training or fitness services on its own. The contractual relationships between the studios and the teachers are not part of these Terms of Use.

2. sviftme and use

MyTomSolutions offers the following services via the **sviftme** platform:

- Profile,
- Calendar function,
- Overview of teaching substitutions,
- Messenger function,
- Statistics section with export function for billing purposes.

The services of the **sviftme** platform serve exclusively to coordinate appointments, availability, and teaching substitutions. Insofar, binding contractual agreements between teachers and studios can be concluded using **sviftme**. Any further content of the agreements between studios and teachers (especially regarding regular availability, amount of remuneration, and qualification) must be agreed upon separately between the parties and are not covered by **sviftme**'s services.

by MyTomSolutions

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It is hereby expressly clarified that teachers can make any remuneration claims, based on the assigning or declining of appointments via the **sviftme** platform, if at all, only from the ordering studio based on contractual agreements, which are to be concluded separately, or based on legal regulations. Any remuneration claims against MyTomSolutions have no foundation.

3. Registration

Registration as a user is done by the creation of a **sviftme** profile. For this purpose, the interested party must provide the information enquired during the registration process, including his e-mail address (username) and a password. The interested party assures to provide all information during the registration process truthfully and is notably obligated to provide a valid e-mail address.

4. Contract term, absence of fees and cancellation

The membership is free of charge, open-ended and can be cancelled at any time without stating any reasons.

A cancellation is done by a written declaration (§ 126b BGB [German Civil Code], by email to goodbye@svift.me or by using the contact form).

If an account is not used for more than 12 months, MyTomSolutions is free to deactivate this account, after further 6 months the account will be deleted.

5. Consent to data usage, visibility of the profile

By registering, the user agrees to the use and storage of his data provided during the registration process for the purpose of contract execution and billing. The user furthermore agrees that the necessary data, in the context of using **sviftme** platform for the stated purposes, is handed over to other parties.

The StiftMe profile created by the user is visible to other registered users. The user can limit the scope of data visible to third parties via the privacy settings in his profile at any time. If and to the extent of which the user limits the visibility, his profile can no longer be found by other users. The usability of the calendar function and of the request section for teacher substitutions is in this case impeded.

Moreover, reference is made to the Data Privacy Statement. This can also be found at <https://svift.me/impressum>.

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6. Third party use, nondisclosure of passwords

The use of the **sviftme** profile by third parties is forbidden. The user is obligated to keep passwords confidential and to not hand them over to third parties for their use. If a password should have been stolen or should the user find out that his password is illegitimately being used by a third party, MyTomSolutions must be notified immediately.

MyTomSolutions and its employees will never ask users for their password.

7. Remarks about the rights of third parties

Most available contents on the **sviftme** platform have been protected by copyright, trademark and competition law or other applicable protection laws and are respectively owned by MyTomSolutions or other third parties, who have provided them. The composition of these contents as such is potentially protected as a database or network of databases in accordance with §§ 4 (2), 87a (1) UrhG [German Copyright Act].

8. Prohibited usage

The user is banned from any activities on or in connection with **sviftme**, which violate applicable law or violate the rights of third parties. Prohibited is notably the posting, the distribution, the offering and the advertising of:

- content, services and / or products that are pornographic and / or violate child protection laws;
- insulting or defamatory content;
- content that constitutes any other statutory offense;
- content, services and / or products that are legally protected or are affected by third party rights (e.g. copy right laws, personal right laws, patent and trademark laws), without the necessary authorisation for use;
- content, services and / or products in violation of data protection laws;
- content that is unlawful for any other reasons.

Regardless of any legal infringements, the following are forbidden in the context of using **sviftme**:

- the spread of viruses, Trojans and other harmful files;

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- the sending of junk or spam emails as well as chain e-mails;
- the spread of indecent, sexual, obscene or vilifying content;
- the spread of content or opinions that are suitable to facilitate any discrimination for reasons of race, ethnicity, gender, religion or ideology, a disability, age or sexual identity;
- the harassing of other users, e.g. by multiple personal contact attempts without or despite the reaction of the other user as well as facilitating and furthering such harassment;
- any request to other users to disclose their passwords or personal data;
- the spread and/or public display of any content available on **sviftme** as long as the relevant originator has not explicitly authorised the user to do so or this functionality is expressly provided on **sviftme**.

9. Reporting any use that is prohibited or in violation of these terms

Any use that is illegal, abusive, contrary to contract or in any other way unwarranted is to be reported by e-mail to donts@svift.me or via the contact form.

10. Dealing with prohibited content

MyTomSolutions reserves itself the right to edit, block or delete any posted content (including private messages and chats histories) without prior notification if the content or the posting of the content violates the above-stated regulations or such a violation is impending. MyTomSolutions will, in this context, take the users' legitimate interests into account.

11. Blocking the sviftme profile

MyTomSolutions is authorised to block a user's **sviftme** profile if

- there is reasonable suspicion that a third party (co-)uses the profile;
- the user violates these Terms of Use and continues to do so despite a warning.

When deciding on blocking a user, MyTomSolutions takes the legitimate interests of the user adequately into account.

12. Liability of the user and exemption

The user is liable towards MyTomSolutions for any damage resulting from a violation of these Terms of Use or of statutory provisions. This does not apply if the user is not responsible for the violation. The user is obligated to indemnify MyTomSolutions from any third party claims resulting from the culpable violation of the above-stated regulations and

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to reimburse MyTomSolutions for any damage resulting from the violation, especially for reasonable fees for legal defence.

13. Rights of use for any content posted by users

By posting content, especially photos, the user declares that he possesses the required permissions and rights of use regarding the content.

14. Obligations of users

The user has, beyond the above stated and without additional agreement, the following obligations among others:

The user is exclusively responsible for the use of **swiftme** and compliance with applicable laws and these Terms of Use in this context.

Depending on the user's individual technical equipment and the quality of his data connection, access and usability of the **swiftme** platform may be limited. The user is responsible for acquiring the technical preconditions to be able to use the **swiftme** platform without limitations.

15. Limitation to the liability of MyTomSolutions

The services of the platform **swiftme** are offered to the user subject to availability. MyTomSolutions endeavours to keep the service accessible at all times. However, due to maintenance, disruptions or reconfigurations and enhancements of the platform, restrictions or interruptions of the usability, even loss of data, can occur. Users cannot incur any claims for compensation from this unless MyTomSolutions is responsible. MyTomSolutions will seek to resolve any disruptions and errors as quickly as possible. However, the user is not entitled to constant availability of the service as long as an availability of 95% during a period of six months is ensured.

In case of any maintenance and repair works that limit the accessibility of the **swiftme** platform, users are adequately informed in an appropriate manner as far as possible in advance.

MyTomSolutions is exempt from any liability in cases of force majeure. Events of force majeure are those events whose impact neither contractual party is responsible for. Such events notably include labour disputes, governmental provisions, disruption of communication networks as well as of hubs of other providers, disruptions stemming

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from network providers and other technical disruptions, even if such events happen with subcontractors or their sub-contractors or at sub-host computers authorised by the provider.

MyTomSolutions does not check the identity of teachers, trainers, etc. nor their personal information entered in the teachers' profiles. Equally, no check of the required qualifications is conducted. MyTomSolutions thus cannot assume any liability for whether the respective profile owner actually is the person the profile owner claims to be. MyTomSolutions does not, in any way, owe any contribution in answering the question to what extent the relevant teacher is suitable for the tasks the studio has assigned him to.

MyTomSolutions has no influence on the quality of the internet connection and the data flow and cannot be held liable for the reliability and speed of the data exchange. MyTomSolutions points out that, with the current state of technology and with the infrastructure of MyTomSolutions, it cannot be ruled out that the data exchange might be intercepted and recorded by third parties.

16. Limitation of liability

MyTomSolutions is liable for damages - regardless of the legal reason - in the context of fault-based liability only in the case of intent and gross negligence. In case of slight negligence, MyTomSolutions is liable - unless statutory provisions state a more clement liability standard (e.g. regarding diligence in proprietary matters) - only

- a) for damages due to violation of life, body or health,
- b) for damages due to negligible violation of a vital contractual obligation (i.e. an obligation whose carrying out is a vital part of the duly contract execution in the first place and on the honouring of which the contractual partner routinely relies and may rely); in this case, however, liability is limited to the reimbursement of the foreseeable, typically eventuating damage.

The preceding liability limitations also apply in case of a neglect of duty by or to parties whose negligence MyTomSolutions is reliable for according to statutory provisions. Liability limitations do not apply if and insofar as MyTomSolutions fraudulently concealed an aggravation or if MyTomSolutions has taken over a guarantee. Claims according to product liability laws remain unaffected.

17. Additional regulations pertaining to the substitution overview

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The studios can list teachers, with whom he can entered a contractual relationship, as a substitution teacher on **swiftme**. This list is visible to all specified substitution teachers and can be used by these teachers for coordinating substitutions. The user is aware that such substitution arrangements can result in contractual obligations and possibly remuneration claims at his expense. The user is aware that the use of the substitution feature can be seen as a consent to such legal obligations and that the use of **swiftme** can insofar affect the contractual relationship with his teachers. The duty to set up this arrangement solely falls to the user.

18. Link-up of user profile to App usage

By linking up the web-based application and the user's **swiftme** profile with the app usage by each individual teacher, the calendar is linked up in so far as the courses assigned to the teacher are shown in the calendar of the teacher. In case of substitution requests of the studio, a matching with the calendars of the connected teachers is performed in the background, and hence an enquiry is only sent to available teachers.

19. Right of modification

MyTom Solutions reserves the right to change these terms of use at any time, taking effect even during the existing contract term. MyTom Solutions will inform the customer about such changes at least four weeks before the changes take effect. Unless the customer objects within four weeks after such a notification and continues to use the service even after the opposition period, the changes are considered effectively agreed upon. If the customer objects within the mentioned period, MyTomSolutions grants the customer a special right of termination.

In each individual change notification, MyTom Solutions will inform the customer about the amendments to be made and the right to object and/or to cancel.

20. Applicable law

For all legal relationships between the parties, the law of the Federal Republic of Germany applies except for conflicts of laws.

21. Place of jurisdiction

For any disputes arising from or in connection with the contractual relationship, the domicile of MyTomSolutions constitutes the place of justification. MyTomSolutions is however also entitled to sue at the client's domicile.

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